

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

BEAU EZEKIEL BROWN,

Petitioner,

vs.

DWIGHT NEVEN, *et al.*

Respondents.

2:11-cv-00790-KJD-RJJ

ORDER

This habeas matter under 28 U.S.C. § 2254 comes before the Court for initial review of the counseled amended petition under Rule 4 of the Rules Governing Section 2254 Cases.

It appears from review of the amended petition that the exhaustion of certain claims is contingent upon the completion of proceedings on a second state post-conviction petition. The amended petition reflects that argument then was scheduled in the state district court for April 19, 2012. It thus would appear that it would be most efficient at this juncture to address any exhaustion and potentially-related stay issues prior to other issues in the case. The Court accordingly will direct the filing of a motion to dismiss restricted to exhaustion issues only, including any exhaustion issues pertaining to claims in the amended petition that are alleged to have been exhausted in prior proceedings. In this vein, if part of petitioner's response will be to request a stay, petitioner must do so in a separate motion for that relief in the alternative, separate and apart from the opposition to the motion to dismiss.

IT THEREFORE IS ORDERED that, within **sixty (60) days** of entry of this order, respondents shall file a motion to dismiss restricted to exhaustion issues only. All other

1 issues in the case, including other procedural defenses, are deferred at this time. The
2 omission of other defenses in the initial motion to dismiss filed in response to this order shall
3 not provide a basis for waiver of defenses, as the Court expressly is limiting the response to
4 only issues of exhaustion. Any motion to modify the procedure outlined in this order must be
5 filed within **thirty (30) days** of entry of this order.¹

6 IT FURTHER IS ORDERED that any request for a stay to exhaust unexhausted claims
7 must be sought by a separate motion, which may be sought in the alternative, separate and
8 apart from any opposition to the motion to dismiss. **For this case, any such motion for a**
9 **stay shall be filed by the due date for the opposition to the motion to dismiss.**

10 IT FURTHER IS ORDERED that briefing will proceed on the motion to dismiss and any
11 motion for a stay filed thereafter as per the standard schedule for same under the local rules.

12 IT FURTHER IS ORDERED that both counsel shall apprise the Court of the then-
13 current state of proceedings on the second state petition in each of their filings.

14 DATED: June 18, 2012

15
16 

17 _____
18 KENT J. DAWSON
19 United States District Judge
20
21
22
23
24

25 ¹The Court is aware that respondents frequently file a motion to dismiss based upon prematurity
26 when state post-conviction proceedings are pending. Following screening review of the amended petition,
27 the Court does not wish to delay the proceedings herein to take up a possible motion to dismiss on the basis
28 of prematurity, as the Court is not persuaded that the matter is premature. If respondents intend to seek to
persuade the Court to proceed otherwise than as this order directs regarding an initial motion to dismiss,
respondents must do so within thirty days. That is, respondents shall not wait until the expiration of the sixty-
day deadline to seek to maintain that the case should proceed differently. In short, the Court wants issue
joined on the potential issues of exhaustion and possible stay and abeyance sooner rather than later.